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05 UNITED STATES DISTRICT COURT  
06 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

07 MARK D., )

08 Plaintiff, )

09 v. )

10 ANDREW M. SAUL,  
Commissioner of Social Security, )

11 Defendant. )

) CASE NO. C20-354-MAT

) ORDER RE: SOCIAL SECURITY  
) DISABILITY APPEAL

12 \_\_\_\_\_ )  
13 Plaintiff proceeds through counsel in his appeal of a final decision of the  
14 Commissioner of the Social Security Administration (Commissioner). The Commissioner  
15 denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before  
16 an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the  
17 administrative record (AR), and all memoranda of record, this matter is REVERSED and  
18 REMANDED for further administrative proceedings.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1969.<sup>1</sup> He has a college degree as well as some  
21 master's-level education, and was previously self-employed organizing seminars and

22 \_\_\_\_\_  
<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 conferences. (AR 290, 639, 823.)

02 Plaintiff applied for SSI in September 2016. (AR 156-59.) That application was  
03 denied and Plaintiff timely requested a hearing. (AR 205-09.)

04 In August 2018, ALJ M.J. Adams held a hearing, taking testimony from Plaintiff and a  
05 vocational expert (VE). (AR 30-67.) On February 20, 2019, the ALJ issued a decision  
06 finding Plaintiff not disabled. (AR 12-24.) Plaintiff timely appealed. The Appeals Council  
07 denied Plaintiff's request for review on February 20, 2020 (AR 1-6), making the ALJ's  
08 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the  
09 Commissioner to this Court.

#### 10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §  
12 405(g).

#### 13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining  
15 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
16 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had  
17 not engaged in substantial gainful activity since the application date. (AR 14.) At step two, it  
18 must be determined whether a claimant suffers from a severe impairment. The ALJ found  
19 severe Plaintiff's neurocognitive disorder, diabetes mellitus, and degenerative disc disease of  
20 the lumbar spine. (AR 15.) Step three asks whether a claimant's impairments meet or equal a  
21 listed impairment. The ALJ found that Plaintiff's impairments did not meet or equal the  
22 criteria of a listed impairment. (AR 15-17.)

01 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
02 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
03 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff capable of  
04 performing medium work with additional limitations: he can lift/carry up to 50 pounds  
05 occasionally and 25 pounds frequently. He can stand/walk a total of about six hours and sit a  
06 total of about six hours, in an eight-hour workday with normal breaks. He can operate  
07 hand/foot controls within the lift/carry restrictions. He can occasionally climb ramps and  
08 stairs, and can frequently stoop. He cannot climb ladders, ropes, or scaffolds. He must avoid  
09 exposure to hazardous machinery or working at unprotected heights. He can understand,  
10 remember, and carry out simple instructions, and can make judgments commensurate with the  
11 functions of unskilled work (*i.e.* work that needs little or no judgment to do simple duties and  
12 a person can usually learn to do the job in 30 days, and little specific vocational preparation  
13 and judgment are needed). He can respond appropriately to supervision and co-workers, and  
14 can deal with occasional changes in the work environment. (AR 17.)

15 The ALJ found that Plaintiff had no past relevant work (AR 23), and therefore moved  
16 on to step five, where burden shifts to the Commissioner to demonstrate that the claimant  
17 retains the capacity to make an adjustment to work that exists in significant levels in the  
18 national economy. With the assistance of the VE, the ALJ found Plaintiff capable of  
19 transitioning to representative occupations, such as mail room clerk, laundry sorter, telephone  
20 order clerk, and final assembler. (AR 23-24.)

21 This Court's review of the ALJ's decision is limited to whether the decision is in  
22 accordance with the law and the findings supported by substantial evidence in the record as a

01 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
02 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
03 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
04 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which  
05 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
06 F.3d 947, 954 (9th Cir. 2002).

07 Plaintiff argues the ALJ erred in (1) assessing the opinion of treating physician  
08 Deborah Oksenberg, M.D.; (2) failing to develop the record; and (3) failing to address or  
09 account for Plaintiff's headaches anywhere in the decision. The Commissioner argues that  
10 the ALJ's decision is supported by substantial evidence and should be affirmed.

#### 11 Medical evidence

12 Dr. Oksenberg completed a form opinion in July 2018, describing Plaintiff's  
13 symptoms and limitations. (AR 860-64.) Specifically, Dr. Oksenberg opined that Plaintiff  
14 was unable to perform even sedentary work due to his shoulder, back, and knee conditions.  
15 (AR 863-64.)

16 The ALJ's discussion of Dr. Oksenberg's opinion contains a significant typographical  
17 error that renders the Court unable to determine with certainty the grounds on which the ALJ  
18 assigned little weight to the opinion. The ALJ starts to explain why he found Dr. Oksenberg's  
19 opinion to be inconsistent with something, but a new sentence is inserted mid-sentence that  
20 pertains to another doctor's opinion.<sup>2</sup> (AR 21.) The ALJ goes on to mention that Dr.

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22 <sup>2</sup> Interestingly, the ALJ made the identical typographical error in the preceding paragraph  
discussing the opinion of Joseph Sever, M.D. (AR 21.)

01 Oksenberg described other shoulder limitations in September 2018, but the ALJ does not  
02 return to finish the findings regarding the July 2018 opinion. (AR 21.)

03       The Commissioner does not address the typographical error in the ALJ's discussion of  
04 Dr. Oksenberg's opinion, and instead states that the ALJ found Dr. Oksenberg's opinion to be  
05 inconsistent with "the record showing minimal treatment and greater functional ability." Dkt.  
06 27 at 10 (citing AR 21). The ALJ did not find Dr. Oksenberg's opinion to be inconsistent  
07 with anything in particular, however; the ALJ found the *State agency opinion* to be consistent  
08 with the treatment notes showing minimal examination findings and no observations of  
09 Plaintiff in distress or discomfort. (AR 21.)

10       Even if ALJ's decision could be plausibly read to find Dr. Oksenberg's opinion  
11 inconsistent with the treatment record, the ALJ did not identify any particular inconsistencies  
12 between the record and the opinion. Moreover, the ALJ's summary of the medical record  
13 focuses on normal findings, without acknowledging the extent of abnormal findings. (*See,*  
14 *e.g.*, AR 19 (the ALJ's list of many normal findings).) For example, Dr. Oksenberg attributed  
15 Plaintiff's most significant limitations to a tendon tear in his right shoulder, but the ALJ does  
16 not address the objective evidence establishing the existence of this tear and the limitations it  
17 caused. (AR 894, 918-1055.) The ALJ mentions a hand therapist's finding of full range of  
18 motion and strength (AR 15), but does not acknowledge that these findings pertained to  
19 Plaintiff's hands, wrists, forearms and fingers, rather than his shoulder, and thus do not  
20 necessarily undermine Plaintiff's allegations of problems with his right shoulder. (AR 1059-  
21 60.) Evidence submitted to the Appeals Council shows that Plaintiff eventually underwent  
22 surgery on his right shoulder, one day before the ALJ's decision was issued, which also lends

01 credence to Plaintiff's allegation of shoulder problems. (AR 161-63.) Because it appears that  
02 the ALJ selectively summarized the treatment record in the decision, the Court finds that the  
03 ALJ's findings pertaining to the treatment record do not constitute a legitimate reason to  
04 discount Dr. Oksenberg's opinion, to the extent the ALJ intended to refer to the treatment  
05 record as a reason to discount the opinion.

06 On remand, the ALJ should reconsider Dr. Oksenberg's opinion, correct the  
07 typographical errors in the assessment of her opinion and Dr. Sever's opinion, and reconsider  
08 the updated medical record as a whole.

09 Other issues

10 Plaintiff was unrepresented at the administrative hearing, and argues that he did not  
11 have a full opportunity to explain his limitations because he felt rushed through the hearing.  
12 Dkt. 23 at 15-17. He also claims that the ALJ did not fully address his alleged headaches in  
13 the decision. Dkt. 23 at 17-18.

14 Because this case must be remanded for further administrative proceedings as  
15 explained *supra*, Plaintiff will have another opportunity to testify and can inform the ALJ  
16 about his headaches and any other conditions or symptoms in more detail on remand.

17 CONCLUSION

18 For the reasons set forth above, this matter is REVERSED and REMANDED for  
19 further administrative proceedings. On remand, the ALJ shall reconsider the updated medical  
20 record, reconsider Dr. Oksenberg's opinion, correct the typographical errors in the discussion  
21 of the opinions of Drs. Oksenberg and Sever, and provide another opportunity for Plaintiff to  
22 testify about his symptoms and limitations.

01 DATED this 1st day of April, 2021.

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04 Mary Alice Theiler  
05 United States Magistrate Judge  
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